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11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 BRIAN CAROLUS, individually and on
behalf of all others similarly situated,

14 Plaintiffs,

15 v.

16 COINBASE GLOBAL, INC.,
COINBASE INC., AND COINBASE
17 BERMUDA SERVICES LIMITED,

18 Defendant.

19 Case No. 3:25-cv-03089-CRB

20 **PLAINTIFFS' RESPONSE IN OPPOSITION**
TO DEFENDANTS MOTION TO COMPEL
ARBITRATION AND STAY PROCEEDINGS

21 Date August 29, 2025
22 Time 10:00 a.m.
23 Judge: Honorable Charles R. Breyer
24 Location: Courtroom 6, 17th Floor

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1 **I. INTRODUCTION**

2 Coinbase's motion is outdated. It ignores the Ninth Circuit's recent decision in *Heckman v.*
 3 *Live Nation*; controlling precedent holding that once a company shifts from bilateral arbitration to
 4 mass procedures—like Coinbase did—it forfeits the protections of the Federal Arbitration Act
 5 (“FAA”). 120 F.4th 670, 689 (9th Cir. 2024). *Heckman* revived the *Discover Bank* rule, which
 6 renders class waivers in adhesive, small-value contracts unconscionable. Coinbase ignores
 7 *Heckman* entirely, relying instead on outdated case law—because it knows this binding precedent
 8 leads to an obvious result: the agreement is unconscionable under California law.

9 This was Coinbase's choice. It could have preserved bilateral arbitration and the protections
 10 of the FAA. But faced with a potential surge of individual arbitration demands—and the steep costs
 11 that come with them—it opted for a system that mirrors class litigation without the safeguards.
 12 Now, having abandoned the core features the FAA was designed to protect, Coinbase seeks to
 13 enforce a class waiver as if nothing has changed. Its request ignores both the facts and the law.

14 But even setting *Discover Bank* aside, Coinbase's agreement fails under established
 15 unconscionability principles. It is a quintessential contract of adhesion and therefore oppressive.
 16 *Bielski v. Coinbase, Inc.*, 87 F.4th 1003, 1014 (9th Cir. 2023) (finding that “Coinbase's delegation
 17 provision contains some level of procedural unconscionability.”). And it is riddled with one-sided
 18 provisions: mass procedures that bind non-parties without notice, a mechanism that allows
 19 Coinbase to unilaterally terminate the arbitration agreement, and penalty provisions that discourage
 20 consumers from challenging its enforceability. For these and the reasons that follow, the Court
 21 should deny Coinbase's motion.

22 **II. BACKGROUND**

23 **A. Despite Plaintiff's life-altering losses—enabled by Coinbase—he could not retain
 24 counsel on an individual basis.**

25 Plaintiff Brian Carolus lost over \$100,000 in a cryptocurrency scam that operated entirely
 26 through Coinbase's platform. Dkt. 1 (“Compl.”), ¶ 67. Every step of the fraud—from the initial
 27 wire transfer to the purchase and transfer of cryptocurrency—took place on the Coinbase platform.
 28 *Id.* ¶¶ 64-68. Carolus even accessed the fraudulent investment platform using Coinbase's in-app
 browser. Coinbase's policies and regulatory obligations require it to detect and prevent suspicious

1 activity, but it failed to act despite clear red flags. Meanwhile, it profited from the scam in small
 2 increments—siphoning off 0.5% to 1% of each transfer. *Id.* ¶¶ 53.

3 For Carolus—a paralegal earning a modest income—his losses were devastating. He spent
 4 years searching for legal representation, but given the complexity of his claims—implicating
 5 cryptocurrency tracing, regulatory duties, and uncertain damage calculations—no attorney would
 6 take the case on a contingency basis. Declaration of Brian Carolus (“Carolus Decl.”) ¶¶ 3-4. The
 7 potential recovery, though meaningful to Carolus, did not justify the costs of individual litigation.¹
 8 And he lacked the resources to hire an attorney by the hour, particularly in the wake of such a
 9 substantial financial loss. *Id.* It was only in the context of a putative class action that he obtained
 10 counsel willing to take the case. And now, Coinbase seeks to compel him to individual arbitration—
 11 the very forum that initially made representation impossible.

12 **B. Coinbase’s one-sided arbitration agreement.**

13 The arbitration clause Coinbase now seeks to enforce does not provide a genuine path to
 14 relief. At the heart of Coinbase’s arbitration clause is a class waiver. By forcing consumers to
 15 proceed one by one, it ensures that no matter how widespread Coinbase’s misconduct, no collective
 16 mechanism is available to challenge it. *See* Dkt. 33-1, Ex. 5, App’x 5, § 1.3. And notably, Coinbase
 17 has already paid \$100 million to resolve regulatory actions based on the *same* failures Plaintiff
 18 challenges here. *See Exhibit A, In the Matter of Coinbase, Inc., Consent Order,* ¶¶ 5, 73, 81.

19 Next, the arbitration agreement introduced mass arbitration protocols triggered once 100
 20 individual demands are filed. Dkt. 33-1, Ex. 5, App’x 5, § 1.8. The agreement also incorporates the
 21 American Arbitration Association’s (“AAA”) Consumer Arbitration Rules. *Id.* at Ex. 5, App’x 5,
 22 § 1.4. Under those rules, the AAA applies its Mass Arbitration Supplementary Rules when 25 or
 23 more similar consumer demands are filed. *Exhibit B*, AAA’s Mass Arbitration Supplementary
 24 Rules, MA-1(c). These supplementary rules establish a system of precedent, where earlier rulings
 25 are binding on absent parties. *Id.* MA-6(c)(i)-(iv), (ix)-(xi); MA-6(d). Future claimants are funneled
 26 into consolidated proceedings and subject to the outcome of earlier arbitrations about which they

27
 28 ¹ Plaintiff’s Counsel has already invested well over \$100,000 in attorney time and expect to invest at least
 \$15,000 in expert fees before discovery even begins. Caparco Decl. ¶¶ 3-4.

1 had no notice, no opportunity to participate, and no meaningful ability to contest the result—yet
 2 they are bound all the same. This change was risky for Coinbase. Commentators noted that
 3 changing from traditional bilateral arbitration to procedures that resemble class litigation risked
 4 losing the protections of the FAA.²

5 Worse still, Coinbase retains the ability to terminate the arbitration altogether. Ex. B, MA-
 6 10(d)–(e). If it refuses to pay its share of arbitration fees—as it did in *Bernstein* when faced with
 7 over 10,000 demands—the arbitration provider may terminate the proceedings. *Bernstein v.*
 8 *Coinbase Global Inc.*, No. 1:25-cv-05313, Dkt. 1 ¶¶ 51–61 (N.D. Ill. May 13, 2025). The affected
 9 consumers were left with no forum except federal court; Coinbase’s preferred forum. Consumers,
 10 by contrast, have no comparable power to relocate to federal court.

11 The imbalance does not end there: the agreement includes a fee shifting clause. *See* Dkt.
 12 33-1, Ex. 5, App’x 5, § 1.7. If a consumer challenges arbitration in court and loses—even
 13 partially—they may be required to reimburse Coinbase for its attorneys’ fees and costs. Coinbase
 14 has already invoked this clause—threatening to seek fees from Plaintiff if its motion to compel is
 15 granted. Declaration of Justin M. Caparco (“Caparco Decl.”) ¶¶ 5. This provision penalizes
 16 consumers for exercising their right to challenge arbitration.

17 Viewed together, these terms create a system in which Coinbase controls the process, the
 18 timing, and the stakes. Consumers, meanwhile, face shifting procedures, binding outcomes from
 19 proceedings they were never part of, and financial penalties for resisting. The structure is built to
 20 deter enforcement, discourage participation, and insulate Coinbase from liability.

21 **III. ARGUMENT**

22 Coinbase’s motion sidesteps a fundamental problem: its class waiver is unconscionable
 23 under *Discover Bank*. The Ninth Circuit recently clarified that the FAA does not preempt that rule
 24 as applied to the mass arbitration procedures Coinbase itself chose. And even putting the *Discover*
 25 *Bank* rule aside, Coinbase’s arbitration clause is unconscionable and therefore unenforceable.
 26

27 ² See, e.g., Myriam E. Gilles, *Arbitration’s Unraveling*, 172 U. Pa. L. Rev. 1063 (2024); Richard Frankel,
 28 *Fighting Mass Arbitration: An Empirical Study of the Corporate Response to Mass Arbitration and Its
 Implications for the Federal Arbitration Act*, 78 Vanderbilt L. Rev. 133 (2025)

1 **A. The *Discover Bank* rule renders Coinbase’s arbitration agreement unconscionable.**

2 The *Discover Bank* rule rests on California’s longstanding recognition that class actions are
 3 essential for consumers to challenge widespread misconduct involving small individual losses.
 4 *Discover Bank v. Superior Ct.*, 113 P.3d 1100, 1105 (Cal. 2005) (citing *Vasquez v. Superior Court*,
 5 484 P.2d 964 (Cal. 1971)). It deems class waivers unconscionable where (1) the agreement is
 6 adhesive, (2) the disputes involve predictably small sums, and (3) the defendant is alleged to have
 7 systematically exploited consumers. *Id.* at 1110; *see also Shroyer v. New Cingular Wireless Servs., Inc.*, 498 F.3d 976, 983 (9th Cir. 2007) (holding that not all three factors need to be present).

8 All factors are present here. Coinbase’s agreement is adhesive—offered on a take-it-or-
 9 leave-it basis, with no ability to opt out. *See Bielski*, 87 F.4th at 1014. The harms at issue are
 10 predictably modest; FTC data show average losses between \$800 and \$8,000, well within the range
 11 courts have found “small.” *See* Compl. ¶ 15; *see also Omstead v. Dell, Inc.*, 594 F.3d 1081, 1086
 12 (9th Cir. 2010) (finding \$1,200-1,500 small); *Oestreicher v. Alienware Corp.*, 322 F. App’x 489,
 13 492 (9th Cir. 2009) (finding \$4,000 small). And the complaint alleges Coinbase enabled and
 14 knowingly profited from fraudulent activity through small transaction fees, typically 0.5% to 1%.
 15 Compl. ¶¶ 52-53. Under *Discover Bank*, Coinbase’s arbitration agreement is unconscionable.

16 **1. The *Discover Bank* rule is only preempted as applied to bilateral arbitration.**

17 The Ninth Circuit recently held that the FAA does not preempt the *Discover Bank* rule as
 18 applied to mass arbitration (*Heckman*, 120 F.4th at 689 (9th Cir. 2024))—relying on Supreme Court
 19 precedent that limits preemption to doctrines interfering with the core features of traditional
 20 arbitration: speed, informality, and individualized proceedings (*see AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 344 (2011)).³ The Supreme Court has emphasized that class proceedings
 21 introduce procedural complexity, higher stakes, and the involvement of absent parties—all of which
 22 are incompatible with the FAA’s envisioned model. *Id.* at 347–49. *Discover Bank* was preempted
 23
 24

25
 26 ³ *See also Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639, 656 (2022) (holding that a state rule
 27 compelling mass joinder in arbitration was preempted because it eliminated the individualized character of
 28 the proceeding); *Hodges v. Comcast Cable Communications, LLC*, 21 F.4th 535, 543 (9th Cir. 2021)
 (holding that rules requiring broad injunctive relief on behalf of third parties interfered with the FAA’s
 vision of bilateral arbitration and were therefore preempted).

1 in that context because it required class arbitration, thus altering the nature of arbitration in ways
 2 that frustrated the FAA's purpose. *Id.* at 351 (explaining that class arbitration "is not arbitration as
 3 envisioned by the FAA.").

4 The Ninth Circuit recognized that mass arbitration is different. It sacrifices the speed,
 5 informality, and one-on-one nature of traditional bilateral arbitration for procedures that mirror
 6 class or consolidated litigation. *Heckman*, 120 F.4th at 689-90. As a result, the FAA's protection
 7 does not extend to mass arbitration procedures because it lacks these fundamental attributes. *Id.*
 8 The *Heckman* court even questioned whether such a system qualifies as arbitration at all. As Judge
 9 Van Dyke put it, calling something "arbitration" does not make it so:

10 Simply labeling something as "arbitration" does not automatically bring it within
 11 the ambit of the FAA's protection. Imagine, for example, an arbitration clause that
 12 required the parties to resolve their disputes through a vigorous, winner-take-all
 13 game of ping-pong. Would the label "arbitration" be enough to bring that agreement
 14 under the FAA and protect such an "arbitration" agreement from state laws deeming
 15 it unconscionable? Of course not.

16 *Id.* at 691 (concurring, J. Van Dyke).

17 Coinbase abandoned the features of bilateral arbitration when it implemented the mass
 18 arbitration procedures, thus subjecting the agreement to the *Discover Bank* rule. *See Viking River*
Cruises, 596 U.S. at 656. Coinbase's mass arbitration protocol—developed nearly a century after
 19 the FAA's enactment—does not share the speed, informality, and individualized nature of bilateral
 20 arbitration. It is a complex procedure that provides for "precedent" and implicates the due process
 21 rights of third parties. Ex. B, MA-6(c)(x) ("previously issued rulings... are binding on subsequent
 22 cases."); *see also* MA-6(d). Interfering with that system via the *Discover Bank* rule does not
 23 obstruct the FAA's objectives because that system is not what the FAA was designed to protect.

24 And this was Coinbase's choice. It could have implemented a class waiver within a
 25 traditional bilateral arbitration agreement protected by the FAA, but it knew the risks: thousands of
 26 individual arbitration demands and crippling filing fees. So, it opted for mass arbitration—opening
 27 the door to *Discover Bank*'s application—despite *Concepcion*'s clear warning that arbitration loses
 28 its FAA protection once the parties depart from bilateral arbitration. *Concepcion*, 563 U.S. at 351

1 (holding that parties agreeing to aggregate arbitration are not “agreeing to arbitration as envisioned
 2 by the FAA...”).

3 Coinbase may rely on *Kohler* to argue that its mass arbitration provision is not
 4 unconscionable. *Kohler v. Whaleco, Inc.*, 757 F. Supp. 3d 1112 (S.D. Cal. 2024). But *Kohler* was
 5 decided just weeks after the Ninth Circuit’s ruling in *Heckman*, before its full implications were
 6 understood by either the parties or the court. The *Kohler* court did not consider whether the class
 7 waiver was unconscionable under *Discover Bank*. Instead, the court assumed—incorrectly, in light
 8 of *Heckman*—that the FAA protected the mass arbitration procedures. *Heckman* makes clear it does
 9 not. Once FAA protection falls away, the class waiver is subject to ordinary unconscionability
 10 review under *Discover Bank*. Nor is it necessary to reach the delegation clause as the *Kohler* court
 11 did because mass arbitration “is not arbitration as envisioned by the FAA.” *Concepcion*, 563 U.S.
 12 at 351. Regardless, delegating arbitrability in an agreement that includes a class waiver is itself
 13 problematic, since the waiver prevents most consumers from securing counsel to challenge
 14 arbitrability in the first place. *Carolus Decl.* ¶ 5. Not to mention Coinbase’s mass arbitration
 15 protocol gives the arbitrator sole discretion to decide whether challenges to the delegation clause
 16 merit individualized consideration—raising serious due process concerns. *See Ex. B, MA-6(d); see*
 17 *also supra* § III.B.2.i.

18 **2. Unconscionability is assessed at contract formation—without reference to “post-
 19 contract formation circumstances.”**

20 Coinbase may argue that mass arbitration hasn’t yet been triggered. But that’s irrelevant.
 21 California courts assess unconscionability based on the circumstances present at the time of
 22 contracting, without considering “post-contract formation circumstances.” *Ramirez v. Charter*
23 Communications, Inc., 551 P.3d 520, 539 (Cal. 2024). This principle is “blackletter law[.]” *Yeng*
24 Sue Chow v. Levi Strauss & Co., 49 Cal. App. 3d 315, 325 (Ct. App. 1975).

25 Federal courts have applied this logic directly to mass arbitration clauses. In *Pandolfi*, for
 26 example, the court held that a bellwether arbitration clause had to be evaluated for
 27 unconscionability at the time of contracting, particularly where companywide policies made it
 28 foreseeable that the clause would be invoked. *Pandolfi v. AviaGames, Inc.*, 2024 WL 3558853, at

1 *4 (N.D. Cal. July 26, 2024); *see also MacClelland v. Cellco P'ship*, 609 F. Supp. 3d 1024, 1041
 2 (N.D. Cal. 2022) (considering the chilling effect of a bellwether provision on absent class
 3 members).

4 Here, it was entirely foreseeable that Plaintiff's claims—based on Coinbase's systemic
 5 failure to implement basic "Know Your Customer"/Anti-Money Laundering safeguards—would
 6 give rise to a wave of similar claims.⁴ And Coinbase has already faced mass arbitration demands
 7 based on company-wide policies. *Bernstein*, No. 1:25-cv-05313, Dkt. 1 ¶¶ 51–61 (N.D. Ill. May
 8 13, 2025). Given this context, it was foreseeable at the time of contracting that the mass arbitration
 9 clause would be in play. And it makes sense to evaluate unconscionability at the time of contract
 10 formation. Otherwise, courts would be forced to wait until mass filings actually materialize—
 11 effectively requiring dozens or hundreds of plaintiffs to trigger review of a clause whose application
 12 was entirely predictable.

13 **3. Plaintiff's losses are not too high to invoke the *Discover Bank* rule.**

14 Coinbase might also argue that Plaintiff's losses are not "small" under the *Discover Bank*
 15 rule. But unconscionability is assessed at the time of contract formation—without reference to
 16 "post-contract formation circumstances"—when it was entirely predictable that Plaintiff would lose
 17 only a small amount. *Ramirez*, 551 P.3d at 539. Moreover, the relevant inquiry is not whether
 18 Plaintiff's losses exceed some arbitrary threshold, but whether the class waiver effectively denies
 19 consumers a practical means of enforcing their rights. *Discover Bank*, 113 P.3d at 1108-09.

20 *i. The relevant inquiry is whether Plaintiff alleged predictably small losses at
 21 the time of contracting.*

22 Unconscionability is assessed based on the circumstances at the time of contracting—not
 23 with the benefit of hindsight. *Ramirez*, 551 P.3d at 539. What matters is whether Coinbase's alleged
 24 misconduct involved predictably modest, individualized losses. *Discover Bank*, P.3d at 1108-09.
 25 Here, Plaintiff alleges just that: Coinbase's systemic failure to follow basic fraud safeguards
 26 exposed users to scams involving average losses between \$800 and \$8,000. Compl. ¶ 15. Those

27
 28 ⁴ Indeed, Plaintiff's class definition is: "All persons in the United States who...bought or transferred
 cryptocurrency on the Coinbase platform, or the Coinbase Wallet website or application." Given this class
 definition, almost every Coinbase user has a potential claim.

allegations squarely fall within *Discover Bank*'s scope. See *Omstead*, 594 F.3d at 1086 (holding \$1,500 was a "small amount"); *Oestreicher*, 502 F. Supp. 2d at 1067 (holding \$4,000 was a "small amount").⁵

Focusing on contract formation—rather than post-contract formation circumstances—also avoids arbitrary results. If enforceability turned on how much a particular user happened to lose, the same boilerplate clause could be enforceable for some users but not others based solely on happenstance. And paradoxically, those most seriously harmed—and thus most in need of a collective remedy—would be presumed to need class mechanisms the least.

ii. *Even considering Plaintiff's losses, individual enforcement remains impractical.*

Even if Plaintiff's actual damages are considered, the *Discover Bank* rule still applies. The relevant inquiry is not the dollar amount lost, but whether the class waiver effectively operates as an exculpatory clause by denying a practical path to relief. *See Oestreicher*, 322 F. App'x at 492. Courts have routinely recognized that even substantial individual losses do not make arbitration feasible when litigation is complex and costly.⁶ In *Massie*, for example, claims ranging from \$10,000 to \$80,000 were still subject to *Discover Bank* because no individual would rationally invest the time and resources required to litigate them. *See Massie v. Ralphs Grocery Co.*, No. B224196, 2012 WL 1078562, at * 6 (April 2, 2012 Cal. Ct. App.); *see also Indep. Ass'n of Mailbox Ctr. Owners, Inc. v. Superior Court*, 133 Cal. App. 4th 396, 408-411 (2005) (damages exceeding \$470,000 did not preclude class relief).

That logic holds here. Plaintiff's Counsel has already spent well over \$100,000 in attorney time investigating the claims, and expert costs are expected to exceed \$15,000 before discovery even begins. Caparco Decl. ¶¶ 3-4. The case involves complex and unsettled issues in

⁵ Coinbase charges fees ranging from 0.5% to 1% of each transaction.

⁶ Coinbase might argue that cases involving individual sums exceeding \$1,000 do not meet the *Discover Bank* rule, citing *Provencher v. Dell, Inc.*, 409 F. Supp. 2d 1196, 1202-04 (C.D. Cal. 2006), but that case has been heavily criticized as inconsistent with the *Discover Bank* rule. See, e.g., *Cohen v. DirectTV*, 142 Cal. App. 4th 1442, 1452 (2006) (holding that losses exceeding “\$1,000 do not take class action waiver outside” the *Discover Bank* rule); *Oestreicher*, 502 F. Supp. 2d 1061 (same); *Douglas v. U.S. Dist. Court for the Cent. Dist. of Cal.*, 495 F. 3d 1062, 1068 (9th Cir. 2007) (rejecting *Provencher*).

1 cryptocurrency tracing and regulatory compliance—making individual arbitration prohibitively
 2 expensive.⁷ Plaintiff nearly let his claims lapse because he couldn’t find counsel willing to proceed
 3 without the possibility of class relief. Carolus Decl. ¶¶ 3-4. The class waiver thus functions exactly
 4 as *Discover Bank* warned—shielding Coinbase not on the merits, but by making enforcement
 5 functionally impossible.

6 As in *Heckman*, Coinbase implemented mass arbitration procedures that depart from the
 7 bilateral model protected by the FAA. That departure brings the *Discover Bank* rule back into
 8 play—and under that rule, the class waiver at the heart of Coinbase’s agreement is unconscionable.
 9 The arbitration agreement is thus unenforceable under California law.

10 **B. Even if California’s *Discover Bank* rule does not apply, Coinbase’s delegation and
 11 arbitration clauses are unconscionable.**

12 Section 2 of the Federal Arbitration Act provides that an arbitration agreement “shall be
 13 valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the
 14 revocation of any contract.” 9 U.S.C. § 2. Where the challenged arbitration clause contains a
 15 delegation clause, unconscionability arguments must be directed at the delegation clause. *Brennan*
 16 v. *Opus Bank*, 796 F.3d 1125, 1132 (9th Cir. 2015). As this Court recently confirmed, “a party may
 17 challenge the delegation provision and the arbitration agreement for the same reasons, so long as
 18 the party specifies why each reason renders the specific provision unenforceable.” *Bielski*, 87 F.4th
 19 at 1009.

20 California law follows a sliding scale approach to unconscionability: “the more
 21 substantively oppressive the contract term, the less evidence of procedural unconscionability is
 22 required to come to the conclusion that the term is unenforceable, and vice versa.” *Sanchez v.*
23 Valencia Holding Co., 353 P.3d 741, 748 (Cal. 2015) (quoting *Armendariz v. Foundation Health*
24 Psychare Services, Inc., 6 P.3d 669, 690 (Cal. 2000)).

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 27 ⁷ Coinbase may argue that this focus on Plaintiff’s ability to vindicate his rights is foreclosed by the Supreme
 28 Court’s decision in *Italian Colors*. See *Am. Express Co. v. Italian Colors Rest.*, 570 U.S. 228 (2013). But the
 arbitration agreement at issue in *Italian Colors* was protected by the FAA; Coinbase’s mass arbitration
 agreement is not. See *Heckman*, 120 F.4th at 689-90.

1 **1. The arbitration agreement and the delegation clause are procedurally
2 unconscionable.**

3 “Under California law, procedural unconscionability addresses contract negotiation
4 formation and focuses on ‘oppression *or* surprise due to unequal bargaining power.’” *Bielski*, 87
5 F.4th at 1013 (citing *Pinnacle Museum Tower Ass’n v. Pinnacle Mkt. Dev. (US), LLC*, 282 P.3d
6 1217, 1232 (2012)) (emphasis added). Oppression exists where “unequal bargaining power results
7 in ‘no real negotiation and an absence of meaningful choice.’” *Bielski*, 87 F.4th at 1013 (citing
8 *Grand Prospect Partners v. Ross Dress for Less, Inc.*, 232 Cal. App. 4th 1332, 1347 (2015)).

9 There is no dispute that Coinbase’s User Agreement—including the delegation clause—is
10 a contract of adhesion. As Coinbase concedes, users must accept its terms to maintain an account.
11 Def. Memo at 12; *see also Bielski*, 87 F.4th at 1014 (“we have little trouble finding [Coinbase’s]
12 delegation provision was presented as an adhesion contract”). That alone establishes procedural
13 unconscionability.⁸

14 Surprise turns on whether the disputed terms are buried in a “prolix” and densely worded
15 form that an ordinary consumer would have no ability to understand. *Patterson v. ITT Consumer*
16 *Fin. Corp.*, 14 Cal. App. 4th 1659, 1664 (Ct. App. 1993). Although the Ninth Circuit found
17 Coinbase’s general dispute resolution terms clearly presented in *Bielski*, that analysis focused on
18 Section 8 of the agreement. *Bielski*, 87 F.4th at 1014. The delegation clause at issue here appears
19 nowhere near that section. Instead, it is tucked more than 60 pages later, in Appendix 5, buried
20 within a dense paragraph titled “Authority of Arbitrator.”

21 The clause itself is anything but clear: a single 14-line sentence riddled with exceptions,
22 cross-references to other contract sections, and links to 44 additional pages on the AAA’s website.
23 It is “a paragon of prolixity,” one that a typical user could not reasonably be expected to navigate—
24 let alone understand. *Oto, LLC v. Koh*, 447 P.3d 680, 691 (Cal. 2019). This complexity, combined
25 with its remote placement and legal jargon, renders the delegation clause both oppressive and
26 surprising. Plaintiff’s assent to these terms was, at most, “formulaic rather than informed.” *Id.* at

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28 ⁸ The *Bielski* court analyzed both oppression and surprise to reach its conclusion that plaintiff established a
“low” level of procedural unconscionability. *Bielski*, 87 F.4th at 1013. Carolus maintains, however, he need
only establish oppression or surprise to satisfy procedural unconscionability. *See Pinnacle Museum Tower*
Ass’n, 282 P.3d at 1232.

1 692. Taken together, these circumstances establish that the delegation clause is marked by
 2 procedural unconscionability.

3

4 **2. Coinbase's arbitration agreement and the delegation clause contain a significant
 degree of substantive unconscionability**

5 Substantive unconscionability focuses on "the fairness of an agreement's actual terms."
 6 *Pinnacle*, 282 P.3d at 1232. California law does not tolerate provisions that are "overly harsh,
 7 unduly oppressive, or unfairly one-sided"—especially in contracts of adhesion. *Lim v. TForce
 8 Logistics, LLC*, 8 F.4th 992, 1000 (9th Cir. 2021). The Ninth Circuit has already recognized that
 9 Coinbase's arbitration agreement contains at least some degree of substantive unconscionability.
 10 *See Bielski*, 87 F.4th at 1015 ("a lack of mutuality in the delegation provision, combined with the
 11 pre-arbitration dispute resolution process establishes, at most, a low level of substantive
 12 unconscionability").

13 But Plaintiff raises several additional grounds not considered in *Bielski*. First, Coinbase's
 14 mass arbitration clause—adopted after *Bielski*—imposes binding precedent without notice or
 15 assurances of adequate representation.⁹ Second, the agreement now permits Coinbase to
 16 unilaterally avoid arbitration by withholding fees; a tactic it has already used. Third, Plaintiff
 17 contests a fee-shifting provision that deters users from asserting their rights in court. Together, these
 18 provisions create a lopsided dispute resolution process that far exceeds the one challenged in
 19 *Bielski*.

20 *i. Coinbase's group arbitration binds absent parties without due process.*

21 Coinbase's mass arbitration protocol is fundamentally unfair. It applies binding precedent
 22 from earlier decisions to future claimants who had no notice, no opportunity to be heard, and no
 23 meaningful representation. That violates basic due process. *Heckman*, 120 F.4th at 684 ("It is black-
 24 letter law that binding litigants to the rulings of cases in which they have no right to participate—
 25 let alone case of which they have no knowledge—violates basic principles of due process."). The
 26 Supreme Court has long made clear that absent class members cannot be bound by a proceeding

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 28
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https://web.archive.org/web/20210412140702/https://www.coinbase.com/legal/user_agreement/united_states

1 unless they receive notice, an opportunity to opt out, and adequate representation. *See, e.g., Phillips*
 2 *Petrol. Co. v. Shutts*, 472 U.S. 797, 812 (1985).

3 Coinbase's rules disregard these basic safeguards. Under its mass arbitration protocol,
 4 rulings from confidential batched arbitrations are applied to future arbitrations. Ex. B, MA-6(c)(x)
 5 (“previously issued rulings... are binding on subsequent cases.”). Future claimants receive no
 6 notice, no opportunity to participate, and no assurance of adequate representation. As in *Heckman*,
 7 Coinbase seeks to claim “many of the procedural protections and advantages of a class action, but
 8 provide [claimants] virtually none of its protections or advantages.” *Heckman*, 120 F.4th at 685.

9 This is not an indictment of group arbitration itself, but of group arbitration stripped of
 10 procedural safeguards. Even in arbitration, absent parties must be afforded notice and a right to opt
 11 out before being bound. *Concepcion*, 563 U.S. at 349 (citing *Phillips*, 472 U.S. at 811-12).
 12 Arbitration can modify a vast range of procedural rules—but that flexibility ends where due process
 13 begins.

14 And to be clear, Coinbase's system threatens to preclude future claimants from challenging
 15 the delegation clause. Ex. B, MA-6(c)(x); MA-6(d). The arbitrator may determine that jurisdictional
 16 issues “do not need to be made on an individual basis,” effectively deciding gateway questions for
 17 future claimants.¹⁰ *Id.* MA-6(d). If an arbitrator upholds the delegation clause, they have unchecked
 18 discretion to determine whether that ruling binds all future claimants. *Heckman*, 120 F.4th at 684.
 19 That risk is not hypothetical. If an ongoing mass arbitration is already underway, Plaintiff's ability
 20 to challenge the delegation clause may have already been foreclosed.¹¹

21 Nor can Coinbase justify this system by claiming the precedent is “mutual.” In reality, only
 22 Coinbase knows the outcome of the batched proceedings and it can adjust its contract terms to
 23 select a different arbitral forum if it doesn't like the results. Future claimants, by contrast, litigate

24 _____
 25 ¹⁰ Coinbase will likely point to MA-6(c)(ix), which requires the arbitrator to give future claimants “the
 26 opportunity to address the applicability” of precedent before issuing a “final determination.” But that
 27 safeguard applies only to merits-based precedent. Jurisdictional issues are governed separately—by MA-
 6(d)—which grants the arbitrator unilateral authority to decide whether those issues “do not need to be made
 on an individual basis.” In other words, gateway questions like the enforceability of the delegation clause
 can be resolved without any input from the claimants who will be bound by the outcome.

28 ¹¹ This might sound outlandish, but in *Pandolfi*, the plaintiff brought a class action suit only to find out there
 was an ongoing mass arbitration. *Pandolfi*, 2024 WL 3558853, at *6.

1 in the dark. Beyond that, the use of precedent is not symmetric because Coinbase litigated those
 2 cases—future claimants did not. That is why non-mutual issue preclusion is permissible against a
 3 party involved in an earlier case, but impermissible against a new party.

4 Coinbase might argue that arbitrators retain discretion not to apply precedent. But, as the
 5 *Heckman* court observed, that would defeat the purpose of mass arbitration:

6 [I]t is obvious that anything more than an occasional failure to apply precedent
 7 established in the bellwether cases would defeat the very purpose of the mass
 8 arbitration protocol. Indeed, it is implausible to the point of near impossibility that
 an arbitrator, absent some compelling reason, would fail to apply the precedent
 established in the bellwether cases.

9 *Heckman*, 120 F.4th at 685. And even so, unbounded discretion is no substitute for due process.
 10 Mass arbitration procedures therefore create a “serious risk of being fundamentally unfair to
 11 claimants, and therefore evinces elements of substantive unconscionability.” *Id.* (quoting *Heckman*
 12 v. *Live Nation Ent., Inc.*, 686 F. Supp. 3d 939, 963 (C.D. Cal. 2023)). Justice Scalia said it best: it
 13 is “odd to think that an arbitrator would be entrusted with ensuring that third parties’ due process
 14 rights are satisfied.” *Concepcion*, 563 U.S. at 349–50.

15 ***ii. The arbitration agreement is illusory.***

16 An agreement to arbitrate is unconscionable if one party retains the unilateral power to
 17 nullify it. That is precisely the case here. A contract that allows the drafter to escape its obligations
 18 at will is not a real agreement—it is illusory. *See Ingle v. Circuit City Stores, Inc.*, 328 F.3d 1165,
 19 1179 (9th Cir. 2003) (holding arbitration clause was unconscionable where the employer could
 20 unilaterally terminate it); *see also Brashear v. Halliburton Energy Servs., Inc.*, No. 1:20-cv-0505-
 21 NON JLT, 2020 WL 4596116, at *14 (E.D. Cal. Aug. 11, 2020) (same).¹²

22 Here, Coinbase—aided by the AAA’s rules—has given itself the unilateral ability to walk
 23 away from arbitration simply by refusing to pay its fees. Under the mass arbitration protocol, if
 24 Coinbase withholds payment, the AAA may terminate the proceeding altogether. Ex. B, MA-10(d)–
 25 (e). The consumer is then forced to refile in court. Other Circuits have already endorsed this

26
 27 ¹² Other circuits agree. *See Dumais v. American Golf Corp.*, 299 F.3d 1216, 1219–20 (10th Cir. 2002); *Floss v. Ryan’s Family Steak Houses, Inc.*, 211 F.3d 306, 315–16 (6th Cir. 2000); *Hooters of Am., Inc. v. Phillips*, 173 F.3d 933, 939 (4th Cir. 1999); *Gibson v. Neighborhood Health Clinics, Inc.*, 121 F.3d 1126, 1133 (7th Cir. 1997).

practice, holding that the “arbitration was complete” when the AAA terminated proceedings due to the defendant’s refusal to pay its share of the fees. *See Wallrich v. Samsung Elecs. Am., Inc.*, 106 F.4th 609, 620 (7th Cir. 2024).

And Coinbase has already done exactly that. After facing over 10,000 arbitration demands, Coinbase simply refused to pay the required filing fees. *See Bernstein v. Coinbase Global Inc.*, No. 1:25-cv-05313, Dkt. 1 ¶¶ 51–61 (N.D. Ill. May 13, 2025). The AAA terminated the proceedings, leaving plaintiffs with no choice but to file in federal court. The one-sided nature speaks for itself: if Plaintiff is compelled to arbitrate, he cannot refuse to pay and exit the process.

iii. *The User Agreement impermissibly shifts arbitration-related fees onto Plaintiff.*

Courts have consistently recognized that contractual provisions imposing additional arbitration costs on consumers or employees reflect procedural and substantive unconscionability. *See Ingle*, 328 F.3d at 1178. As the California Supreme Court made clear, an employee—or, by extension, a consumer—“cannot be required to bear any type of expense that [they] would not be required to bear...in court.” *Armendariz*, 6 P.3d at 687.

The California Supreme Court recently struck down a fee-shifting provision that allowed an employer to recover its attorneys' fees after successfully compelling arbitration, finding that it imposed an improper deterrent to challenging the agreement's enforceability. *Ramirez*, 551 P3d at 540-41. The Court found the provision unconscionable because it "could chill an employee's right to challenge the enforceability of the arbitration agreement" even if some of the "arguments made by the resisting party are successful." *Id.*

Coinbase’s User Agreement includes a nearly identical clause. It states that if a party seeks a court order to compel arbitration, the prevailing party “shall have the right to collect from the other party its reasonable costs, necessary disbursements, and reasonable attorneys’ fees.” *See* Dkt. 33-1, Ex. 5, App’x 5, § 1.7. Realistically, only Coinbase will be compelling arbitration. Thus, this provision exposes a consumer to substantial liability merely for asserting a legal challenge to

1 arbitration—a risk they would not face in court. Like the clause in *Ramirez*, it impermissibly chills
 2 access to justice and is therefore unconscionable.¹³

3 **C. Severance is improper here because the arbitration agreement is permeated with
 4 unconscionability.**

5 Under California law, courts may refuse to enforce an agreement where unconscionable
 6 terms reflect a broader effort to tilt the forum in favor of the drafter. *See Cal. Civ. Code § 1670.5(a);*
 7 *Armendariz*, 6 P.3d at 696-97. The key inquiry is whether “the central purpose of the contract is
 8 tainted with illegality” and whether severance would serve “the interests of justice.” *Ramirez*, 551
 9 P.3d at 547 (quoting *Armendariz*, 6 P.3d at 696). Where, as here, the agreement contains multiple
 10 unconscionable provisions courts decline to sever. *See Pinela v. Neiman Marcus Grp., Inc.*, 238
 11 Cal. App. 4th 227, 254–55 (2015); *Lhotka v. Geographic Expeditions, Inc.*, 181 Cal. App. 4th 816,
 12 826 (2010).

13 Coinbase’s arbitration agreement is permeated with unconscionability and cannot be
 14 salvaged through severance. It contains a class waiver that forecloses relief, imposes mass
 15 procedures that bind non-parties without due process, allows Coinbase to evade arbitration, and
 16 punishes individuals for challenging the clause.

17 **IV. CONCLUSION**

18 Plaintiff respectfully requests that the Court deny Coinbase’s motion. Not only does the
 19 class waiver violate the *Discover Bank* rule, but Coinbase’s mass arbitration procedures raise
 20 serious due process concerns—concerns that may have already precluded Plaintiff from
 21 meaningfully challenging the delegation clause. For these reasons, and those set forth more fully in
 22 this brief, Coinbase’s motion should be denied.

23 Dated: July 14, 2025

Respectfully submitted,

24 **STEPHAN ZOURAS, LLC**

25 By: /s/ Justin M. Caparco

26 Justin Caparco

27 Counsel for Plaintiff

28 ¹³ Coinbase may argue that *Ramirez* is inapplicable because it involved employment claims. But the Court’s reasoning was not limited to that context. A fee-shifting clause can be unconscionable even if it doesn’t violate a specific statute.